IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1829 OF 1992

1. M/s Noorani Builders
   a partnership firm carrying
   on its business at Room No. 301,
   3rd floor, Bombay Panvel Road,
   Mumbra

2. Shri Ahmed Haji Umer

3. Mohd. Kasam Sheikh

4. M.A. Shaikh
   Partners of opponent No.1
   having their office at 301
   3rd floor, Noorani Mahal, Mumbra
   Panvel Road, Mumbra, Dist. Thane. ..Petitioners.

V/s

1. Shri Barkat Ali Mohd. Ali Nayani

2. Shaikh Abdul Hamid
   Both residing at Noorani Mahal, Bombay
   Panvel Road,Mumbra, Dist. Thane. ..Respondents.

Ms. Hetel h/for Navin Parekh for the petitioners.
Mr. D.K. Ghaisas for respondents.

CORAM : D.G.DESHPANDE, J.

DATE : 13TH SEPTEMBER, 2006.

ORAL ORDER

. Heard Ms. Hetal, Advocate for the petitioners and Mr. Ghaisas, Advcoate for the respondents. The consent terms were arrived at between the parties in

Civil Suit No.1093 of 1989, Exh."A". The petitioners before this Court were the defendants in that suit. As per the consent terms defendants/petitioners were to pay the plaintiffs/Respondents Rs. 50,000/-, out of which Rs. 25,000/- were already paid. The remaining amount of Rs. 25,000/- was to be paid within 3 months from the date of consent terms which was dated 12/12/1990. Clause 32 of the consent terms also speaks that the defendants/petitioners to carry out certain repairs in the time settled between the parties and if that was not done, plaintiffs were given right to carry out these repairs and recover the costs from the defendants by filing execution proceedings.

2. It appears that the petitioners/defendants did not pay the amount of Rs. 25,000/- within stipulated period and did not carry out the repairs within stipulated period. Therefore, contempt petition came to be filed at the instance of the plaintiff before the trial Court. While Contempt Application No. 378/1991 was pending, plaintiff also filed an application for injunction restraining the petitioners-defendants from completing the structure of raising from 3rd floor to 4th floor. That application of the plaintiffs was

allowed by the Joint Civil Judge, J.D., Thane by order dated 26th March, 1992 and therefore, this petition was filed by the defendants.

3. At the time of admission of the petition the order came to be passed on 30th April, 1992 grating Rule on condition that the petitioners to deposit Rs. 25,000/- within one week in the Court. In the event of the deposit being effected, there will be stay of the further proceedings in the Trial Court and the noting are made in this regard in this petition.

4. In this background of the matter, in fact nothing survives in this petition. In the sense that the petitioners are required to pay the amount of Rs. 25,000/- to the respondents. The amount has already been deposited by the petitioners in this Court. The matter is pending since 1992 i.e. from the date of the order of the Lower Court and grant of stay by this Court on admission of this petition. Therefore, it can be disposed of by giving certain directions. I therefore, pass the following order.

A. The amount of Rs. 25,000/- deposited by the

petitioners/defendants in this Court shall be paid over to the respondents/plaintiffs with interest upto date, as early as possible by the office. Thereafter, the defendants will be at liberty to make construction as per consent terms.

B. If at all, any repairs are required then as per clause 32 the plaintiffs will be entitled to get repairs done at the costs of the defendants and recover the costs from the petitioners/defendants by filing execution proceedings.

C The impugned order granting injunction is therefore, set aside and Contempt Petition No. 378/1991 for contempt filed by the respondents- plaintiffs against the petitioners-defenants is also quashed and set aside.

D. So far as repairs are concerned, liberty is given to the plaintiff to recovery the costs in execution proceedings. The petitioners shall deposit Rs. 5000/- before the trial Court in that regard within one month from today and then he will have right to further construction upto 3rd and 4th floor.

E. If the said amount of Rs. 5000/- is deposited the same shall be paid over to the plaintiffs for carrying out the repairs but the payment will be subject to the bills submitted by the plaintiff in the Court in execution. The plaintiff will give necessary help to the defendants in carrying out construction as per consent terms.

(D.G.DESHPANDE, J.)